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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/725,048 | 12/01/2003 | Malin E. Holcomb | 100993.00005 | 2976 |
| 26710 | 7590 | 03/30/2005 | EXAMINER | |
| QUARLES & BRADY LLP 411 E. WISCONSIN AVENUE SUITE 2040 MILWAUKEE, WI 53202-4497 | | | EDEL, JOSEPH F | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3636 | |

DATE MAILED: 03/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|--------------------------------|--|
| Office Action Summary | Application No. 10/725,048 | Applicant(s) HOLCOMB ET AL. | |
| | Examiner Joseph F Edell | Art Unit 3636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 7 is objected to because of the following informalities: "central portion" (line 2) should read --a central portion--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5, and 7-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,257,664 B1 to Chew et al.

Chew et al. disclose a seat back that includes all the limitations recited in claims 1, 5, and 7-11. Chew et al. show a seat back having a shell 15 (Fig. 1) that is rigid and curved, a back panel 20 (Fig. 3) of the shell that includes first and second lateral sides (Fig. 2) that extend forward, a first wing 19 (Fig. 3) fastened in an adjustable first position to the first lateral side, a second wing 19 (Fig. 3) fastened in an adjustable second position to the second lateral side, a cushion attached to the shell with a conformable body of resilient foam material (see column 3, lines 56-59), a fastener arrangement (Fig. 5) to attach the shell to a frame, and a plurality of fasteners 17 (Fig.

5) of the fastener arrangement that each has a bracket 26 (Fig. 5) attached to the shell, a separate hook portion 35 (Fig. 5) with an aperture, threaded fasteners (Fig. 5) passing through the shell and a slot 28 (Fig. 5) of the bracket wherein the fasteners adjust along two axes.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4, 6, and 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chew et al. in view of U.S. Patent No. 5,370,444 to Stulik.

Chew et al. disclose a seat back that is basically the same as that recited in claims 2-4, 6, and 12-22 except that the cushion lacks a specified central portion, pleated first and second lateral sections, and a stretchable cover, as recited in the claims. Stulik discloses a cushion similar to that of Chew et al. wherein the cushion 10 (Fig. 1) is attached to a shell 30,32 (Fig. 2) with a body (Fig. 1) that includes a central section 12a (Fig. 1), a lateral section 12b,12c (Fig. 2), first and second surfaces (Fig. 2) of the body with first and second plurality of interleaving grooves 21 (Fig. 2) forming pleats, and a cover 11 (Fig. 2) of stretchable material encasing the body and having an element 30e (Fig. 2) connecting the cushion to the shell. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to

modify the seat back of Chew et al. such that the cushion has a central section adjacent the back panel of the shell, a first lateral section adjacent the first wing, a second lateral section adjacent the second wing, a first surface of the body with a first plurality of grooves extending vertically, a second surface of the body with a second plurality of grooves interleaved with the first grooves forming pleats enabling the body to stretch and conform with changes in the positions of the first and second wings, and a stretchable cover encasing the body and including an element attaching the cushion to the shell, such as the cushion disclosed in Stulik. One would have been motivated to make such a modification in view of the suggestion in Stulik that the cushion configuration allows for adjustability without requiring extensive cutting and sewing of parts.

Response to Arguments

6. Applicant's arguments filed 20 December 2004 have been fully considered but they are not persuasive. Applicant argues that the teachings of Chew et al. with respect to the cushion are insufficient to anticipate claims 1, 5, and 7-11. However, recitations in Chew et al. teach that the cushion is attached to the shell and has a body that stretches and contracts to conform to alteration of the curvature of the shell. For example, column 1, lines 59-61 recites, "[t]he base member consists of one or more rigid shells covered with a compressible foam." Also, column 2, lines 19-20 recites, "[t]he back member is covered with a compressible foam and an outer covering." Next, column 2, lines 23-25 recites, "[a] foam covering system is provided which

accommodates adjustment of the lateral members relative to the back.” Finally, column 2, lines 63-64 recites, “[t]he base member 15 consists of one or more rigid shells 20 ultimately covered with a compressible foam.” These teachings show that Chew et al. has a cushion that covers the base member of the back and the adjustable lateral members wherein the cushion accommodates adjustment in curvature and is ultimately enclosed with an outer covering. Therefore, Chew et al. anticipates the limitations regarding the cushion in claims 1, 5, and 7-11.

Next, Applicant points out deficiencies in the Stulik reference individually. For example, Applicant argues that the cushion does not show adjustment of the curvature of the seat back, the backrest does not have a central section with two wings, and the cushion does not have vertically extending grooves. However, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the cushion features taught in Stulik are used in combination with the shell of Chew et al. that has a cushion connected to the adjustable first and second wings such that the cushion has pleated first and second lateral sections attached to the first and second wings and including vertically extending grooves enabling the body of the cushion to stretch and contract with changes in the positions of the first and second wings. Please note, a lateral section is merely a section that is on a side of an object. Therefore, the cushion of Stulik has lateral sections extending from a central section. The recitation

does not limit the section to be extending vertical section of a seat back that me adjust horizontally adjusted.

With respect to Applicant's argument that Chew et al. fails to show lateral panels that project in a forward direction, see Figures 2, 5, and 6 of Chew et al. for the teaching that the shell has a central portion and lateral panels projecting in a forward direction. Lastly, Applicant argues that Chew et al. fails to teach a cover and the cover of Stulik is not stretchable. However, see column 2, lines 19-20 of Chew et al. for the teaching that the cushion has a cover. Also, the cloth or vinyl cover of Stulik is shown in the two change in shape and length during adjustment of the cushion. Therefore, the cover is inherently of stretchable material.

Conclusion


7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3636

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216 until 07 April 2005 and will be (571) 272-6858 thereafter. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JE
March 21, 2005


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